IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 409 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT.

Versus

AMBALAL T PATEL

Appearance:

1. Criminal Appeal No. 409 of 1991

MR HH PATEL,APP for Petitioner No. 1

MR AD SHAH for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 05/04/2002

ORAL JUDGEMENT

1. The State of Gujarat, in this appeal, has challenged the judgment and order dated 30.3.1991 passed by the learned Chief Judicial Magistrate, Bharuch acquitting all the accused of offences punishable under

sections 406, 408 and 114 of the IPC.

2. The respondent no.1 is the father of respondents no.2 and 3. The respondent no.1, while performing his duty as a Secretary of Matar Sahakari Mandali between 1.11.1983 and 31.10.1984, with the aid of respondents no. 2 and 3, misappropriated a sum of Rs. 1,11,545.02 being the advance of cotton sale. All the respondents were, therefore, charged by the learned Magistrate for offence punishable under sections 406, 408 read with section 114 of the IPC. The learned Magistrate, after appreciating the evidence on record, was of the opinion that the prosecution in the instant case has not established the charge against the respondents and he, therefore, passed the judgment and order acquitting all the respondents.

3. The complainant Pravinsinh A.Rana, PW 1 Ex. 17, at the relevant time, was serving as the Assistant, Cooperative Housing Society in the Office of Assistant District Registrar, Bharuch. In his evidence, he has only stated that on the basis of the order dated 3.10.1985 passed by the Assistant District Registrar, he filed complaint Ex. 18. Except filing the complaint, he has no other information. He was rightly not cross examined by any of the respondents. Perusing the complaint, it appears that the Special Auditor, Cooperative Societies, Bharuch carried out audit of Miyamatar Group Vividh Karyakari Seva Samiti on 29.6.1985 for the period from 1.11.1983 to 31.10.1984. He found misappropriation of Rs.39,045.54 and temporary misappropriation of Rs. 63000/-. He accordingly submitted report to the Assistant District Registrar, Bharuch who by his order dated 3.10.1985, asked the complainant to file police complaint. As per the report of Special Auditor, the respondent no.1 as well as his two sons, the respondents no. 2 and 3 who were the members of the society had taken more amount of cotton sale than they were entitled to get. As stated in the complaint, the respondent no.1 obtained Rs. 45,799.76, respondent no.2 obtained Rs. 32,825.13 while the respondent no.3 obtained Rs.27,352.13. The complainant, in his evidence, has not stated anything about the averments and allegations made in the complaint and, therefore, his evidence will be of no assistance to the prosecution. Not only that, but he has also not produced the order dated 3.10.1985 passed by the Assistant District Registrar, Cooperative Societies, Bharuch authorising him to file the complaint. This, in my opinion, will definitely raise doubt regarding the genuineness of the complaint and the authority on the part of the complainant to file the complaint against the

respondents. It is pertinent to note that the Special Auditor who audited the accounts of the society for the period between 1.10.1983 and 31.10.1984 has also not been examined by the prosecution. The investigating officer Shri NH Patil, PSO, Amod has also not been examined in the present case for the reasons best known to the prosecution. Thus, by not examining the aforesaid witnesses who are material witnesses to prove the charge levelled against the respondents, no conviction can be based relying on the evidence of other prosecution witnesses.

4. I have gone through the evidence of other witnesses. Vasantlal Patel, PW 3 Ex. 37 who became Chairman after 1.1.1985, in his evidence, has stated that the auditor conveyed information to him that Rs. 1 lac have been misappropriated by the respondents. Except bare word of the said witness, there is nothing on record which may involve the respondents in the commission of offence. The evidence of Ibrahim M. Chauhan, PW 4 Ex. 40 can also be rejected for the same reason. Dineshchandra Thakar, PW 5 Ex. 41 and Balwantsinh Ajitsinh, PW 6 Ex. 42 have been examined to prove the statement Ex. 24 alleged to be the extra judicial confession of respondent no.1. In absence of any corroboration to the said extra judicial confession Ex. 24, no importance can be attached to Ex. 24. Therefore, the evidence of PW 5 and 6 will not be of any assistance to the prosecution.

5. Thus, taking the overall view of the matter, in my opinion, the learned trial judge was justified in passing the order of acquittal. Therefore, no interference is called for in the matter. Learned APP Mr. Patel has not pointed out any circumstance warranting me to take a different view in the matter.

6. There being no substance in this appeal, it is dismissed.

(Kshitij R.Vyas,J.)

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